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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CITY OF STOCKTON et al., Petitioners, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; CIVIC PARTNERS STOCKTON, LLC, Real Party in Interest.	C048162 (Super. Ct. No. 03AS00193)

After the trial court overruled their demurrers to the complaint of real party in interest Civic Partners Stockton, LLC (Civic), petitioners the City of Stockton (the City) and the Redevelopment Agency of the City of Stockton (the Redevelopment Agency) initiated this original proceeding for writ of mandate seeking to compel the trial court to sustain the demurrers. The City and the Redevelopment Agency contend Civic's complaint is barred by Civic's failure to present a claim under the

Government Claims Act (Gov. Code, § 810 et seq.) before filing suit. We agree and shall grant the requested relief.

FACTS AND PROCEDURAL HISTORY

Because this proceeding follows an order overruling demurrers to the most recent complaint filed by Civic, we summarize and accept as true all material allegations of that complaint. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8, fn. 3; *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7.)

Civic and the Redevelopment Agency entered into two contracts, the first for rehabilitation of the Hotel Stockton (the hotel) and the second for development of a cinema near the hotel.

In May 2001, the City entered into a lease with Civic for 65,000 square feet on the upper floors of the hotel. However, three months later, the City repudiated the lease. In a meeting with Civic and several others, Mark Lewis, the City manager and executive director of the Redevelopment Agency, "stated that the [C]ity would not go forward with the lease, and he demanded that [Civic] agree to replace the lease with another use of the upper floors of the hotel, or the [C]ity would not participate further in Civic's development." Without the lease, or a viable alternative use, Civic could not finance renovation of the hotel and, without the hotel, Civic could not finance the cinema.

Lewis offered Civic an alternative to use the upper floors of the hotel for senior housing. This alternative made it impossible for Civic to meet milestones and dates for

performance of the hotel development agreement. The hotel interior had to be redesigned and the space had to be "financeable" through government grants and income tax credits, application for which would take time. Civic agreed to the change to mitigate its damages from the City's breach of the lease. "Civic spent many months turning the hotel from [C]ity offices to senior residential housing. The [C]ity intervened in this process. The [C]ity manager would permit [Civic] to apply only for four percent tax credits instead of the maximum nine percent credits. The nine percent credits were more financeable than four percent credits, but carried a different tenant mix. Thus, [Civic] had to design the project for four percent credits, had to make it credit worthy despite the lower subsidy in tax credits, and had to produce plans to be used in applying to the state agency in charge of selecting the recipient developers of the credits."

By the end of 2001, "Civic had completed the tax and financing analysis, plans, and other work necessary to prepare the application for tax credits in the March competition." This process cost Civic several hundred thousand dollars.

In January 2002, Lewis informed Civic that the Redevelopment Agency had decided to allow Cyrus Youssefi and his company, CFY Development, Inc., to take over renovation of the upper floors of the hotel, the senior housing plan and the tax credit application. Civic immediately began discussions with Steve Pinkerton, the Redevelopment Agency's director of housing and development, and Jim Rinehart, the Redevelopment Agency's

manager of housing and development, "on how the [Redevelopment Agency] intended to protect Civic from the damages from this breach of the hotel [development] agreement and the prior breach of the lease and the hotel development agreement." Pinkerton and Rinehart "agreed that to avoid damaging [Civic] further by the breach, the [Redevelopment Agency] owed Civic and would repay Civic's investment and overhead to develop the hotel and would assure Civic that the hotel development agreement would not be undermined further . . . ."

In order to obtain tax credits, an application had to be submitted by March 19, 2002. To facilitate this application, the Redevelopment Agency requested that Civic turn over the plans it had created on the hotel. On February 19, Civic sent Pinkerton a letter indicating its willingness to turn over the plans subject to the understanding that the plans can only be used by the Redevelopment Agency, the City or others subject to an agreement between the Redevelopment Agency and Civic regarding the future renovation of the hotel, including the reimbursement of costs incurred by Civic to date. That same day, Rinehart signed the letter for Pinkerton, agreeing to its terms.

In a subsequent discussion on March 15, Pinkerton "agreed that the [Redevelopment Agency] recognized certain specific amounts due to or on behalf of [Civic] and certain necessary acts to cure to the extent possible the outstanding breach of the hotel development agreement." Civic followed this discussion with a memorandum sent to Pinkerton the same day

setting forth various terms of Civic's understanding with the Redevelopment Agency, including that the City would assume a $800,000 loan to Civic, the City would reimburse Civic for hotel expenditures after December 1, 2001, and CFY Development, Inc., would lease the first floor of the hotel to Civic for 55 years. Pinkerton never questioned or disavowed this memorandum.

Civic had paid its architect over $600,000 to prepare the plans for the hotel by the time they were turned over to the City and the Redevelopment Agency. The Redevelopment Agency personnel assured Civic that the plans would not be given to Youssefi unless the Redevelopment Agency provided Civic with assurances that Civic's interests would be protected. The Redevelopment Agency also agreed to assume Civic's obligation on the $800,000 loan.

On March 19, 2002, the Redevelopment Agency entered into a new hotel development agreement with another of Cyrus Youssefi's companies, Hotel Stockton Investors. This effectively repudiated the hotel development agreement with Civic. The City and the Redevelopment Agency also turned over Civic's plans to Youssefi. The Redevelopment Agency did not pay Civic for the cost of preparing the plans. The Redevelopment Agency also did not take over Civic's obligation on the $800,000 loan.

In connection with the cinema development agreement, Civic obtained a lease of the new cinemas from Kirkorian Premiere Theatres. The City and the Redevelopment Agency approved the lease. However, some time thereafter, the City began to induce Kirkorian to deal directly with the City or the Redevelopment

Agency to become a tenant of the Redevelopment Agency rather than Civic. The City or the Redevelopment Agency later entered into a lease with another theater chain. The Redevelopment Agency eventually terminated the cinema development agreement with Civic in order to enter into a new agreement with another developer.

Civic filed suit against the City, the Agency, Cyrus Youssefi, Hotel Stockton Investors, and CFY Development, Inc. After various demurrers were sustained, Civic filed a second amended complaint. It alleges five causes of action: (1) breach of the lease by the City; (2) breach of the hotel development agreement by the Redevelopment Agency; (3) breach of the cinema development agreement by the Redevelopment Agency; (4) intentional interference with the development agreements by the City; and (5) intentional interference with the development agreements by Youssefi and his companies.

The City and the Redevelopment Agency (collectively Petitioners) filed a cross-complaint against Civic alleging, among other things, that Civic breached the two development agreements and the lease.

Petitioners filed demurrers and a motion to strike the second amended complaint, asserting Civic failed to allege compliance with the claims presentation requirement for suits against governmental entities. The trial court overruled the demurrers, concluding the claims presentation requirements do not apply to actions based on contract. The court also denied the motion to strike.

DISCUSSION

I

The Government Claims Act

Petitioners contend the trial court erred in overruling their demurrers to the second amended complaint. They argue Civic's claims are subject to the claim filing requirement of the Government Claims Act (Gov. Code, § 810 et seq.; further undesignated section references are to the Government Code) and the complaint fails to allege compliance with that requirement. We agree.

The Government Claims Act establishes the bases and conditions under which claims against state and local public entities may be pursued. Section 905.2 states: "(a) There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the state . . . ." A valid claim must contain, among other things, the name and address of the claimant, "[t]he date, place and other circumstances of the occurrence or transaction which give rise to the claim asserted," "[a] general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim," and the amount claimed. (§ 910.) A claim alleging death or injury to person or personal property or growing crops must be presented within six months of accrual of a cause of action.

All other claims must be presented within one year of accrual. (§ 911.2.)

The claim filing requirement of the Government Claims Act has several purposes: (1) to provide the public entity with sufficient information to allow it to make a thorough investigation of the matter; (2) to facilitate settlement of meritorious claims; (3) to enable the public entity to engage in fiscal planning; and (4) to avoid similar liability in the future. (*TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal.App.4th 736, 742.)

"[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board . . . ." (§ 945.4.) "[F]ailure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action." (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.)

II

Express Contract Claims

The second amended complaint contains four causes of action against the City or the Redevelopment Agency: three alleging breach of express contracts, to wit, the hotel development agreement, the cinema development agreement, and the lease, and

one alleging intentional interference with the lease. In each claim, Civic seeks monetary damages.

In overruling Petitioners' demurrers, the trial court stated: "The contention that [Civic] has failed to allege compliance with the Govt. Tort Claims Act, and therefore cannot state a cause of action, is overruled. Govt. Code Section 814 expressly provides that nothing in the Tort Claims Act 'affects liability based on contract'. *E. H. Morrill Co. v. State* (1967) 65 Cal.2d 787, 793. The case cited by defendants, *State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, is factually distinguishable, as it involves the alleged misdiagnosis of a prisoner's lung cancer and failure to provide medical care, not breach of contract."

Civic contends the trial court was correct in overruling the demurrers because "[t]he California Supreme Court has suggested that section 814 of the Government Code exempts contracts from the claims feature in section 905." Civic cites as support *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 22.

The reliance of Civic and the trial court on section 814 and the two cited cases is misplaced. It is undisputed the Government Claims Act applies to actions based on torts. (See, e.g., *Turner v. State of California* (1991) 232 Cal.App.3d 883, 888; *Crow v. State of California* (1990) 222 Cal.App.3d 192, 199.) Thus, the trial court clearly erred in overruling demurrers to the fourth cause of action for intentional interference with contract.

In addition, despite the often used references to the Tort Claims Act or the Government Tort Claims Act, it is generally recognized that the claim presentation requirement of the Government Claims Act (§ 900 et seq.) applies to causes of action alleging breach of express contract. (See *Hart v. County of Alameda* (1999) 76 Cal.App.4th 766, 778-779; *Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 305; *Alliance Financial v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 641 (*Alliance Financial*); *Crow v. State of California*, *supra*, 222 Cal.App.3d at p. 199; *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1079.) Section 905.2 requires presentation of a claim for any cause of action against the state "[f]or money or damages on express contract." (§ 905.2, subd. (a)(3).) Legislative history suggests an intent to apply the claim presentation requirement of the Government Claims Act to all types of claims for money damages. As explained by the Court of Appeal in *Alliance Financial*: "Prior to 1959, Government Code section 29704 provided that parties wishing to institute a suit on any 'claim against the county . . . whether founded upon contract, express or implied, or upon any act or omission of the county' first were required to present the claim to the county's governing board of supervisors. In 1959, following a study conducted under the direction of Professor Van Alstyne . . ., the Law Revision Commission determined that because of the large number and variety of claims statutes then existing under California law, '. . . the law of this State governing the

presentation of claims against governmental entities is unduly complex, inconsistent, ambiguous and difficult to find, that it is productive of much litigation and that it often results in the barring of just claims.' (Recommendation and Study Relating to the Presentation of Claims Against Public Entities (Jan. 1959) 2 Cal. Law Revision Com. Rep. (1959) p. A-7.) The commission recommended a complete overhaul of the claims statutes. As a result of Professor Van Alstyne's study and the commission's recommendation, the Legislature repealed at least 174 statutes providing separate claims procedures for various local entities, replacing them with a single, uniform law set forth at Government Code former section 700 et seq. (See Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) p. 1007.)

"One of the problems identified by Professor Van Alstyne was that the various claims statutes were wildly inconsistent as to the type of action they were intended to govern. Professor Van Alstyne noted that Government Code former section 29704, mentioned above, exemplified the broadest form of claims statute. Other statutes were drawn more narrowly, and 'have been construed correspondingly. Provisions which require presentation of all claims "for damages," for example, do not apply to claims for money due on contract but do embrace breach of contract claims and all types of claims founded in tort whether intentional or negligent . . . . On the other hand, a claims provision which is expressly or impliedly limited to claims for money precludes the necessity of presenting a claim

as a prerequisite to injunctive or declaratory relief, but does embrace all forms of monetary demands including pension claims and all types of tort and contract claims.' (Recommendation and Study Relating to the Presentation of Claims Against Public Entities (Jan. 1959) 2 Cal. Law Revision Com. Rep. (1959) p. A-82-A-83, fns. omitted.) With the adoption of the uniform law, Government Code former section 29704 was repealed. In place of it and of the various other repealed claims statutes, the Legislature adopted Government Code former section 710, providing that, with certain carefully specified exceptions, 'No suit for money or damages may be brought against a local public entity . . . until a written claim therefor has been presented to the entity in conformity with the provisions of this article . . .' and has been rejected in whole or in part. Section 710 was repealed in 1963 and replaced, in part, with Government Code section 945.4. In light of the language of Government Code former section 29704, and of Professor Van Alstyne's comments, there can be no doubt but that the Legislature intended the claims presentation statutes to apply not only to tort claims, but also to claims for breach of contract and claims for money due under a contract. In short, unless specifically excepted, *any* action for money or damages, whether sounding in tort, contract or some other theory, may not be maintained until a claim has been filed with the relevant public entity and either the public entity acts on it or it is deemed to have been denied by operation of law." (*Alliance Financial*, *supra*, 64 Cal.App.4th at pp. 641-642.)

Section 814, on which the trial court and Civic place so much reliance, reads: "Nothing in this part affects liability based on contract or the right to obtain relief other than money or damages against a public entity or public employee." In *E. H. Morrill Co. v. State*, *supra*, 65 Cal.2d at pages 793-794, the state high court concluded section 814 precludes a claim of immunity under the Government Claims Act for actions based on breach of contract. In *Longshore v. County of Ventura*, *supra*, 25 Cal.3d at page 22, the court likewise concluded the sovereign immunity shield provided by the Government Claims Act does not apply to actions based on contract.

While section 814 may provide an exemption from the *immunity provisions* of the Government Claims Act for actions based on breach of contract, this exemption does not extend to the *claim presentation requirement* of section 900 et seq. (*Loehr v. Ventura County Community College Dist.*, *supra*, 147 Cal.App.3d at p. 1079.) The "part" to which section 814 refers is Part 2 (§§ 814-895.8), dealing with liability of public entities. Section 814 says Part 2 does not limit the liability of governmental entities for breach of contract. However, the claim presentation requirement is found in Part 3 (§§ 900-935.8). Thus, Civic was required to present a claim to Petitioners before asserting any of the causes of action in the second amended complaint.

III

Implied Contract

Apparently recognizing the weakness of its position, Civic attempts to recast the second amended complaint as one seeking equitable relief based on an implied contract or quasi-contract. Civic argues the Government Claims Act does not apply to actions based on implied contract.

In *Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, the complaint alleged police had taken $7,720 from an arrestee and, upon disposition of the case, wrongfully transferred it to the Policeman's and Fireman's Pension Fund. A claim was filed for return of the money but was rejected as untimely. A complaint was then filed for $7,720 in damages. The superior court sustained demurrers to the complaint based on failure to submit a timely claim. (*Id.* at pp. 117-118.) The Supreme Court reversed.

The Supreme Court concluded that, despite the fact the plaintiff was seeking money damages, the nature of the suit was for the return of property, and such suit does not fall within the scope of the Government Claims Act. (*Minsky v. City of Los Angeles, supra,* 11 Cal.3d at pp. 120-121.) The court explained: "[W]e find that the government in effect occupies the position of a bailee when it seizes from an arrestee property that is not shown to be contraband. [Citation.] The arrestee retains his right to eventual specific recovery, whether he seeks to regain tangible property like an automobile, ring, wallet or camera, or

whether he seeks to recover a specific sum of money which, under general constructive trust principles, is traceable to property within the possession of the defendant. [Citations.] Although the instant complaint does not expressly seek specific recovery of the money in question, it does contain a general prayer for any such relief as the court may deem just and proper, and under established California authority, the facts alleged by the complaint are sufficient to support a claim for specific recovery of the sums seized and allegedly wrongfully withheld from plaintiff. [Citation.] As such, we hold that noncompliance with the claims statutes erects no bar to the instant action." (*Id.* at pp. 121-122.)

Civic contends the amended complaint alleged "a claim in declaratory relief for restitution based on the unjust enrichment of the [Redevelopment Agency] and Mr. Youssefi." Civic argues the trial court erroneously sustained demurrers to the amended complaint based on federal copyright law and thereby precluded Civic from asserting claims based on implied contract.

Assuming Civic is correct that a claim based on restitution of, for example, the hotel development plans, or for unjust enrichment is not barred by the Government Claims Act, this avails Civic nothing. The second amended complaint alleges breach of three express contracts. The fact that the amended complaint may have alleged breach of implied contract is of no moment, as that complaint is not before us for consideration. The only matter at issue here is whether the trial court erred in overruling demurrers to the second amended complaint.

IV

Estoppel

Civic contends Petitioners are estopped to rely on the Government Claims Act. Civic argues Petitioners did not raise the Government Claims Act in their initial demurrers. According to Civic, "[i]f they had, the time to file a claim would not yet have run." However, Civic cites nothing to suggest Petitioners were required to raise the Government Claims Act at the earliest possible time. Furthermore, the claim that Civic now says it would have filed related to their allegation that the agreements set forth in the February 19 and March 15 correspondence had been violated. While alluded to in the second amended complaint, Civic did not pursue a cause of action based upon those alleged violations.

V

Substantial Compliance

Civic contends it substantially complied with the claim filing requirement of the Government Claims Act by virtue of the February 19 letter and the March 15 memorandum and, therefore, Petitioners are estopped to rely on the act.

The Government Claims Act requires only substantial compliance with the claims presentation requirement. (*Schaefer Dixon Associates v. Santa Ana Watershed Project Authority* (1996) 48 Cal.App.4th 524, 533.) In *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, the state high court adopted a two-part test for determining whether there has been substantial

compliance with the Government Claims Act: "Is there *some* compliance with *all* of the statutory requirements; and, if so, is this compliance sufficient to constitute *substantial* compliance?" (*Id.* at pp. 456-457.)

Here, Civic does not even argue the purported notices in the February 19 and March 15 documents provided some compliance with all of the requirements of section 910. The February 19 letter was addressed to Pinkerton and read: "Following up the discussions that occurred this week regarding the Hotel Stockton, we will be glad to provide you with a reproducible set of the latest hotel plans. These are the plans that were the basis for the bid number from Raymond Bros. Construction and are approximately a 90% construction set.

"Provision of the plans is subject to the following understanding. First, the plans are the property of Civic Partners. Second, the plans can only be used by the Redevelopment Agency, City or others subject to an agreement between the Agency and Civic Partners regarding the future renovation of the Hotel (including reimbursement of costs to date), as well as a cooperative agreement between the Agency and Civic Partners regarding other components of the Channel Head project (including the cinema and B&M Building).

"By signing below you will be agreeing with these understandings. Upon return of this letter with the appropriate Agency signature, we will work to get the plans to you as quickly as possible. They are in my office in Modesto and could either be picked-up or sent overnight.

"If you have any questions, please give me a call."

The March 15 memorandum is a list of general terms of a supplemental agreement between the City and Civic. It specifies, among other things, that the City will assume the $800,000 loan, the City will reimburse Civic for expenditures after December 1, 2001, Civic will be leased ground floor space in the hotel for 55 years, and the City will partially reimburse Civic for cinema design costs.

These documents say nothing about the "date, place and other circumstances of the occurrence" (§ 910, subd. (c)), a "general description of the indebtedness, obligation, injury, damage or loss incurred" (§ 910, subd. (d)), or the amount claimed (§ 910, subd. (f)). There was no substantial compliance.

VI

Claim as Presented

A claim that does not amount to substantial compliance may nevertheless qualify as a claim as presented. Section 910.8 reads: "If in the opinion of the board or the person designated by it a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2 . . . , the board or the person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. . . ." "A 'claim as presented' is a claim that is defective in that it fails to comply substantially with Government Code sections 910

and 910.2, but nonetheless puts the public entity on notice that the claimant is attempting to file a valid claim and that litigation will result if it is not paid or otherwise resolved. A 'claim as presented' triggers a duty on the part of the governmental entity to notify the claimant of the defects or omissions in the claim. A failure to notify the claimant of the deficiencies in a 'claim as presented' waives any defense as to its sufficiency." (*Alliance Financial*, *supra*, 64 Cal.App.4th at p. 643; see § 911 ["Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8].)

Civic cites a number of cases which, it argues, support a conclusion that the February 19 and March 15 documents amounted to a claim as presented.

In *Alliance Financial*, a janitorial services company sued to collect for services rendered. No claim per se had been submitted to the defendants, but the plaintiff had sent invoices for the work and letters describing the basis for a lawsuit. (*Alliance Financial*, *supra*, 64 Cal.App.4th at pp. 639-640.) The Court of Appeal found the letters amounted to a claim as presented and triggered the defendants' duty to notify the plaintiff of defects. The letters described the substance of the plaintiff's claim in detail, asserted a right to payment, and indicated the claim is ripe and litigation can be expected if the matter is not resolved. (*Id.* at pp. 646-647.) Despite

the fact the letters were somewhat equivocal about filing suit and expressed a desire to negotiate further, the court concluded they were sufficient to trigger the defendants' duty under section 910.8. (*Id.* at p 647.)

In *Foster v. McFadden* (1973) 30 Cal.App.3d 943, the plaintiff was injured by a bulldozer driven by McFadden, an employee of the county sanitation district. The plaintiff's attorney sent a letter to McFadden, in care of the sanitation district, advising that he had been retained to represent the plaintiff in connection with the accident. The letter said: "'Please forward this letter to your insurance carrier and have them contact the undersigned immediately. If you carry no insurance, please call this office at once and advise what disposition you wish to make of this matter.'" (*Id.* at p. 945, fn. 2.) The court held the letter triggered a duty on the part of the district to notify the plaintiff of the defects in his claim. (*Id.* at p. 949.)

In *Wheeler v. County of San Bernardino* (1978) 76 Cal.App.3d 841, the plaintiff sued the county for damages to real property based on acts of the county's surveyor and employees, who allegedly recorded a survey that they knew, or should have known, was inaccurate. (*Id.* at p. 844.) Believing that the 100-day period for submitting a claim applied, and this period had already run, the plaintiff submitted a claim attached to an application to file a late claim. The application was rejected. (*Id.* at p. 845.)

The Court of Appeal concluded the plaintiff had one year to submit a claim, and the claim and application had been submitted within one year. (*Wheeler v. County of San Bernardino, supra,* 76 Cal.App.3d at p. 846.) The court further concluded the claim attached to the application for leave to file a late claim was sufficient to satisfy the claim filing requirement, despite the fact it was not submitted for that purpose. (*Id.* at p. 847.) The court said: "'If the requisite information is in fact given, it is not essential that it be given with the intention of complying with the claims statute. [Citation.]'" (*Ibid.*)

Civic argues the case closest to the present matter is *Ocean Services Corp. v. Ventura Port Dist.* (1993) 15 Cal.App.4th 1762. There, the plaintiff, Ocean Services Corporation (OSC), entered into an agreement with the defendant, Ventura Port District (VPD), to develop a commercial marina with restaurants and retail shops. VPD failed to disclose a restrictive covenant burdening one of the parcels and, when this came to light, assured OSC it would be resolved. (*Id.* at pp. 1768-1770.) However, litigation was commenced in Los Angeles to enforce the restrictive covenant, and construction was suspended. On July 6, 1982, OSC sent a letter to VPD concerning OSC's losses and confirming that the parties would settle the matter after the restrictive covenant was removed. On November 15, 1982, OSC wrote VPD advising that its losses would approach $1.8 million. VPD asked for more data because its attorneys wanted to use the information to settle the Los Angeles action. On January 3, 1984, OSC served on VPD an "Amendment to Claim and Claim" for

damages, which was rejected by VPD. On July 18, 1984, OSC filed suit. (*Id.* at p. 1771.)

The trial court denied VPD's motion to dismiss based on the Government Claims Act and the jury returned a verdict for OSC. (*Ocean Services Corp. v. Ventura Port Dist., supra,* 15 Cal.App.4th at pp. 1772-1773.) The trial court held "'that the claims statutes have been . . . complied with and/or waived . . . .'" (*Id.* at p. 1775.) The Court of Appeal affirmed. On VPD's argument that the action was barred by the claim presentation requirement as a matter of law, the Court of Appeal concluded VPD waived the protection of the Government Claims Act and, in any event, there was substantial compliance. The court explained: "The parties had exchanged letters concerning the restrictive covenant as far back as 1980. Barney's [VPD's general manager] July 1981 letter memorialized an agreement to extend the period for final action on OSC's claim until the Los Angeles action was resolved. Barney stressed that the parties develop mutually satisfactory contingency plans to resolve the issue.

"In July and November of 1982 the parties exchanged further correspondence confirming their prior agreement to settle OSC's claim after the restrictive covenant was removed. A letter from OSC to Parsons [Barney's replacement] on November 15, 1982, advised VPD that OSC's losses would approach $1.8 million. VPD told OSC to wait and provide additional data. It did.

"We conclude that VPD waived the requirements of the claims statute and was estopped from asserting that the January 1984

claim was untimely. [Citations.] Because of VPD's correspondence and verbal assurances, OSC reasonably believed that it need not take any further action to perfect a claim against VPD. [Citation.] The claims statute may not be invoked to penalize a plaintiff who at the behest of a public entity has been induced not to take action, but instead to wait until the situation creating a conflict has stabilized. [Citation.]

"The estoppel doctrine aside, we also agree with the trial court's alternate finding that OSC substantially complied with the claims statute. The 1981 correspondence, together with the amended claim, enabled VPD to make an early investigation of the facts and determine whether the problem called for litigation or settlement. [Citations.] As stated, Barney's July 1981 letter acknowledged OSC's claim and memorialized an agreement to negotiate or take final action on the claim at a later date. Such an agreement was authorized because VPD failed to give written notice of rejection of the claim within two years of accrual of the cause of action. (§§ 913, 945.6, subd. (a)(2).) We conclude that OSC's letter of November 1982 informing VPD of its losses preserved the claim and was supplemented by the January 1984 'Amendment to Claim and Claim.'" (*Ocean Services Corp. v. Ventura Port Dist.*, *supra*, 15 Cal.App.4th at pp. 1776-1777.)

Civic cites one other case of note. In *Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699 (*Phillips*), the trial court sustained demurrers to the complaint in a medical malpractice action against a public hospital on the ground that the

complaint failed to allege compliance with the Government Claims Act. The Supreme Court reversed based on substantial compliance. The plaintiff's attorney had sent a notice pursuant to Code of Civil Procedure section 364, which requires 90 days prior notice before commencing an action for medical malpractice. The Supreme Court held that, although this notice failed to comply with the Government Claims Act and was not intended to do so, it nevertheless disclosed the existence of a claim and communicated to the hospital that a lawsuit against the district would result if it was not resolved. It therefore triggered the notice and defense-waiver provisions of the Government Claims Act. (*Phillips, supra,* at pp. 709-710.)

Regarding the fact the notice was not intended to comply with the Government Claims Act, the court said: "Implementation of the purposes of the claim presentation requirements--to require public entities to manage and control claims and to encourage timely investigation and settlement to avoid needless litigation--depends not on a claimant's state of mind but rather on the information imparted to the public entity. Thus, the relevant inquiry is not into plaintiffs' subjective intent but whether their 364 notice disclosed to the hospital that they had a claim against it which, if not satisfactorily resolved, would result in the filing of a lawsuit." (*Phillips, supra,* 49 Cal.3d at pp. 709-710.)

Civic cites two other cases that are inapposite because they involved a claim filed by one party where suit was filed by another on that claim. In *Lacy v. City of Monrovia* (1974) 44

Cal.App.3d 152, the police had mistakenly entered a family's home and the husband filed a claim on behalf of the family. The court concluded the wife's claim was not barred even though she did not submit a claim on her own behalf. (*Id.* at pp. 153-154.) In *San Diego Unified Port Dist. v. Superior Court* (1988) 197 Cal.App.3d 843, a workers' compensation insurer attempted to intervene in an action by the employee against her employer. The court concluded the claim submitted by the employee was sufficient to satisfy the claim filing requirement of the insurer. (*Id.* at pp. 845-846, 852.)

Civic contends the foregoing cases support a conclusion that the February 19 and March 15 documents satisfied the claim filing requirement or at least triggered Petitioners' obligation to notify Civic of any defects in its claim.

Civic contends "[t]he information and commitments exchanged between Civic and the [A]gency and [C]ity were in volumes" compared to that in the cases discussed above. Civic argues Petitioners cannot argue they did not know: "(1) Civic had rights in the hotel agreement, (2) the [A]gency needed Civic's permission to substitute Mr. Youssefi for Civic, (3) the [A]gency had committed not to go forward with Youssefi until Civic had a binding agreement with the [A]gency, (4) the [A]gency committed to a number of very explicit payments and set-asides to Civic, (4) [*sic*] the [A]gency promised that if Youssefi failed in the hotel, Civic's rights under its hotel agreement would be respected, and (5) the [A]gency told outsiders that the [A]gency and Civic had made their peace and

that the hotel was progressing under a new developer with Civic's blessing."

Assuming Petitioners were aware of the foregoing facts, this did not put them on notice of Civic's claims against them. All of the correspondence between Civic and Petitioners amounted to negotiations either to mitigate Civic's damages from Petitioners' earlier breaches or for new contractual arrangements to replace the two development agreements and the lease. Those documents set forth terms of new agreements between the parties, which Civic now asserts were violated by Petitioners, thus adding to the damages arising from the Petitioners' breach of the three contracts that underlie the first three causes of action.

Unlike the correspondence in the cases cited by Civic, the documents sent to Petitioners did not notify Petitioners of the amounts Civic claimed to be owed or the basis for such debt and did not alert Petitioners that Civic intended to file suit for breach of the three agreements or intentional interference with those agreements if the matter could not be resolved. Thus, they did not serve the primary purposes of the Government Claims Act--to alert Petitioners of the need to investigate and to allow Petitioners an opportunity to decide whether the claims will be litigated. There was no attempt, effective or otherwise, to satisfy the requirements of the Government Claims Act.

Civic contends it is at least entitled to a hearing on the factual issue whether Petitioners were put on notice of the need

to alert Civic of any defects in its claim. However, because no claim was submitted, there was no occasion for Petitioners to alert Civic of its defects.

VII

Cross-Complaint

Civic contends Petitioners have waived reliance on the Government Claims Act by filing a cross-complaint based on the three agreements. Civic argues the fact Petitioners filed a cross-complaint proves they knew enough about the dispute to satisfy the purposes of the Government Claims Act. Second, according to Civic, "it is manifestly unjust to permit [Petitioners] to allege a breach of several agreements against Civic, but refuse Civic relief under the same contract if it is due."

As to Civic's first argument, the fact Petitioners knew enough to file a cross-complaint does not prove they were aware of Civic's claim before this action was initiated. Petitioners may have been aware of their own claims against Civic, but unaware of what Civic claimed it was due. Knowledge of the details of Civic's claim may not have been gained until after Civic filed suit.

As to Civic's second argument, we agree it would be unfair to permit Petitioners to pursue their cross-complaint while denying Civic the right to assert their claims. In *Krainock v. Superior Court* (1990) 216 Cal.App.3d 1473, a personal injury action was filed against a school district and an individual

codefendant and the school district cross-complained against the codefendant. The codefendant filed a cross-complaint against the school district, but the school district successfully moved for judgment on the pleadings on the codefendant's cross-complaint for non-compliance with the Government Claims Act. The Court of Appeal granted writ relief and directed the superior court to enter a new order denying the school district's motion. (*Id.* at p. 1475.)

The Court of Appeal adopted a three-part test for deciding when a cross-complaint may be asserted against a governmental entity without compliance with the Government Claims Act. "First, . . . the situations in which claims requirements would not apply should be limited to those cases initiated by the public entity." (*Krainock v. Superior Court, supra,* 216 Cal.App.3d at p. 1478.) "The second rule . . . is that the defensive pleading . . . must arise out of the same transaction or event forming the basis of the plaintiff's claim and may not introduce an unrelated claim." (*Ibid.*) Finally, "the cross-complaint may assert only defensive matter," i.e., it must be limited to claims "'which, if successful, would destroy or diminish the plaintiff's recovery, but not to claims for affirmative relief.'" (*Ibid.*) All three requirements were met in *Krainock*. (*Ibid.*)

The present matter does not satisfy the first part of the *Krainock* test. This case was initiated by Civic, not Petitioners. Civic was not filing a defensive response to Petitioners' claims but their own affirmative claims.

Nevertheless, we agree it would be manifestly unfair to allow Petitioners to pursue their claims for breach of the development and lease agreements and deny Civic a right to assert claims in response. Therefore, Petitioners should be given the option whether to pursue or drop their cross-complaint. If Petitioners choose the former, Civic should be permitted to file a cross-complaint against Petitioners asserting any defensive claims they may have. However, only claims that might serve to negate Petitioners' claims may be pursued in this manner.

DISPOSITION

The alternative writ, having fulfilled its purpose, is hereby dissolved. The stay issued by this court on December 3, 2004, is hereby vacated. Let a peremptory writ of mandate issue directing respondent superior court to vacate its order overruling Petitioners' demurrers to the second amended complaint and to enter a new order sustaining those demurrers. We do not reach the question whether the demurrer should be with or without leave to amend because, for the reasons set forth in part III of this opinion, the question is not properly before us. The trial court shall thereafter give Petitioners the option whether to pursue or drop their cross-complaint. If Petitioners choose the former, Civic shall be given leave to file a cross-complaint limited to any claims it might have that could serve to negate Petitioners' claims.

HULL, J.

We concur:

NICHOLSON, Acting P.J.

MORRISON, J.

Filed 10/28/05

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CITY OF STOCKTON et al., Petitioners, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; CIVIC PARTNERS STOCKTON, LLC, Real Party in Interest.	C048162 (Super. Ct. No. 03AS00193) ORDER CERTIFYING OPINION FOR PUBLICATION [NO CHANGE IN JUDGMENT]

ORIGINAL PROCEEDINGS in mandate. Jeffrey L. Gunther, Judge. Alternative writ dissolved; peremptory writ issued; stay vacated.

Wulfsberg Reese Colvig & Firstman Professional Corporation, Charles W. Reese, Timothy A. Colvig, Mark A. Stump, and Jeffrey R. Ward for Petitioners.

No appearance for Respondent.

Malcolm A. Misuraca for Real Party in Interest.

THE COURT:

The opinion in the above-entitled matter filed on October 4, 2005, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

NICHOLSON, Acting P.J.

MORRISON, J.

HULL, J.